

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JERRY E. ARNOLD,
P
vs.
UNITED STATES OF AMERICA,

CASE NO. 07cv836 BTM
99cr635 BTM

ORDER DENYING PETITIONER'S MOTION TO CLARIFY ORDER OF SENTENCE

16 On April 6, 2007, Petitioner filed a motion to clarify this Court's order sentencing him
17 to 110 months of imprisonment. Petitioner contends that his sentence should run concurrent
18 with his prior State of California prison sentence of 16 months. He argues that the state court
19 sentence specifically reflected this understanding and that the sentencing record reflects this
20 Court's acknowledgment of the state court's wishes.

21 The portion of the transcript of Petitioner's sentencing that he submitted along with his
22 motion did not appear to address this Court's determination as to whether the two sentences
23 should run concurrently. Accordingly, on May 14, 2007, this Court requested Respondent
24 to file a response to Petitioner's motion, which would include a transcript of the sentencing
25 proceedings and address any statements made by the Court regarding this issue of
26 concurrent sentences. Respondent failed to file anything in response to this Court's order.
27 The Court, therefore, obtained a copy of the full transcript of the Petitioner's sentencing.

28 A full review of the sentencing proceedings reveals that this Court did not indicate any

1 desire to have Petitioner's federal sentence run concurrent with his state sentence. The only
2 mention of concurrent sentences appears on page 2546 of the transcript of the October 25,
3 1999 sentencing, which was the page previously submitted by Petitioner. In discussing
4 Petitioner's prior conviction in state court and the resulting 16-month sentence, the Court
5 asked if the State of California had made those 16 months concurrent to any federal
6 sentence. Petitioner's counsel responded that it had.

7 At no time in the sentencing proceedings did this Court order that the two sentences
8 should run concurrently. This Court has reviewed the abstract of judgment form relating to
9 his relevant state court conviction, and has filed this document as an attachment to this
10 order. The abstract makes no indication that the 16-month sentence is to run concurrent to
11 any federal sentence. Finally, it appears that Petitioner has been in continuous federal
12 custody since June 1999 and, when he completes his federal sentence, if he is returned to
13 the State of California to serve any remainder of his state sentence, he is free to make an
14 application to the state court for such relief. However, Petitioner has presented no reason
15 for disturbing this Court's previous sentence of 110 months of federal imprisonment.
16 Accordingly, Petitioner's motion is **DENIED**.

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18 **IT IS SO ORDERED.**

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DATED: July 13, 2007

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22 Hon. Barry Ted Moskowitz
United States District Judge

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Jul 11 2007 10:41 P.02

U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FORM DSL 290.1

ABSTRACT OF JUDGMENT – PRISON COMMITMENT SINGLE OR CONCURRENT COUNT FORM

(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

SUSPENDED
PROBATION
SPLIT
SPLIT

COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

COURT (J.D.C.)

BRANCH OR JUDICIAL DISTRICT

EL CAJON

VICTIM

SPLIT

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